

House File 296 - Reprinted

HOUSE FILE 296

BY COMMITTEE ON PUBLIC SAFETY

(SUCCESSOR TO HSB 61)

(As Amended and Passed by the House March 14, 2017)

A BILL FOR

1 An Act relating to controlled substances, including by
2 temporarily designating substances as controlled substances,
3 modifying the penalties for imitation controlled substances
4 and certain controlled substances, modifying the controlled
5 substances listed in schedules I, III, and IV, and providing
6 penalties.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

TEMPORARY CONTROLLED SUBSTANCES

1
2
3 Section 1. Section 124.201, subsection 4, Code 2017, is
4 amended to read as follows:

5 4. If any new substance is designated as a controlled
6 substance under federal law and notice of the designation is
7 given to the board, the board shall similarly designate as
8 controlled the new substance under ~~this chapter~~ after the
9 expiration of thirty days from publication in the federal
10 register of a final order designating a new substance as a
11 controlled substance, unless within that thirty-day period
12 the board objects to the new designation. In that case the
13 board shall publish the reasons for objection and afford
14 all interested parties an opportunity to be heard. At
15 the conclusion of the hearing the board shall announce its
16 decision. Upon publication of objection to a new substance
17 being designated as a controlled substance under ~~this chapter~~
18 by the board, control under ~~this chapter~~ is stayed until the
19 board publishes its decision. If a substance is designated
20 as controlled by the board under ~~this subsection~~ the control
21 shall be considered a temporary and if, within sixty days after
22 the next regular session of the general assembly convenes,
23 the general assembly has not made the corresponding changes
24 in ~~this chapter~~, the temporary designation of control of
25 the substance by the board shall be nullified amendment to
26 the schedules of controlled substances in this chapter. If
27 the board so designates a substance as controlled, which
28 is considered a temporary amendment to the schedules of
29 controlled substances in this chapter, and if the general
30 assembly does not amend this chapter to enact the temporary
31 amendment and make the enactment effective within two years
32 from the date the temporary amendment first became effective,
33 the temporary amendment is repealed by operation of law two
34 years from the effective date of the temporary amendment. A
35 temporary amendment repealed by operation of law is subject to

1 section 4.13 relating to the construction of statutes and the
2 application of a general savings provision.

3 DIVISION II

4 IMITATION CONTROLLED SUBSTANCES

5 Sec. 2. Section 124.101, Code 2017, is amended by adding the
6 following new subsection:

7 NEW SUBSECTION. 15A. "*Imitation controlled substance*" means
8 a substance which is not a controlled substance but which by
9 color, shape, size, markings, and other aspects of dosage unit
10 appearance, and packaging or other factors, appears to be or
11 resembles a controlled substance. The board may designate a
12 substance as an imitation controlled substance pursuant to the
13 board's rulemaking authority and in accordance with chapter
14 17A. "*Imitation controlled substance*" also means any substance
15 determined to be an imitation controlled substance pursuant to
16 section 124.101B.

17 Sec. 3. NEW SECTION. 124.101B **Factors indicating an**
18 **imitation controlled substance.**

19 If a substance has not been designated as an imitation
20 controlled substance by the board and if dosage unit appearance
21 alone does not establish that a substance is an imitation
22 controlled substance, the following factors may be considered
23 in determining whether the substance is an imitation controlled
24 substance:

25 1. The person in control of the substance expressly or
26 impliedly represents that the substance has the effect of a
27 controlled substance.

28 2. The person in control of the substance expressly
29 or impliedly represents that the substance because of its
30 nature or appearance can be sold or delivered as a controlled
31 substance or as a substitute for a controlled substance.

32 3. The person in control of the substance either demands or
33 receives money or other property having a value substantially
34 greater than the actual value of the substance as consideration
35 for delivery of the substance.

1 Sec. 4. Section 124.401, subsection 1, unnumbered paragraph
2 1, Code 2017, is amended to read as follows:

3 Except as authorized by this chapter, it is unlawful for any
4 person to manufacture, deliver, or possess with the intent to
5 manufacture or deliver, a controlled substance, a counterfeit
6 substance, ~~or a simulated controlled substance,~~ or an imitation
7 controlled substance, or to act with, enter into a common
8 scheme or design with, or conspire with one or more other
9 persons to manufacture, deliver, or possess with the intent to
10 manufacture or deliver a controlled substance, a counterfeit
11 substance, ~~or a simulated controlled substance,~~ or an imitation
12 controlled substance.

13 Sec. 5. Section 124.401, subsection 1, paragraph a,
14 unnumbered paragraph 1, Code 2017, is amended to read as
15 follows:

16 Violation of this subsection, with respect to the following
17 controlled substances, counterfeit substances, ~~or simulated~~
18 controlled substances, or imitation controlled substances, is a
19 class "B" felony, and notwithstanding section 902.9, subsection
20 1, paragraph "b", shall be punished by confinement for no
21 more than fifty years and a fine of not more than one million
22 dollars:

23 Sec. 6. Section 124.401, subsection 1, paragraph b,
24 unnumbered paragraph 1, Code 2017, is amended to read as
25 follows:

26 Violation of this subsection with respect to the following
27 controlled substances, counterfeit substances, ~~or simulated~~
28 controlled substances, or imitation controlled substances is a
29 class "B" felony, and in addition to the provisions of section
30 902.9, subsection 1, paragraph "b", shall be punished by a
31 fine of not less than five thousand dollars nor more than one
32 hundred thousand dollars:

33 Sec. 7. Section 124.401, subsection 1, paragraph c,
34 unnumbered paragraph 1, Code 2017, is amended to read as
35 follows:

1 Violation of this subsection with respect to the following
2 controlled substances, counterfeit substances, ~~or~~ simulated
3 controlled substances, or imitation controlled substances is a
4 class "C" felony, and in addition to the provisions of section
5 902.9, subsection 1, paragraph "d", shall be punished by a
6 fine of not less than one thousand dollars nor more than fifty
7 thousand dollars:

8 Sec. 8. Section 124.401, subsection 1, paragraph c,
9 subparagraph (8), Code 2017, is amended to read as follows:

10 (8) Any other controlled substance, counterfeit substance,
11 ~~or~~ simulated controlled substance, or imitation controlled
12 substance classified in schedule I, II, or III, except as
13 provided in paragraph "d".

14 Sec. 9. Section 124.401, subsection 2, Code 2017, is amended
15 to read as follows:

16 2. If the same person commits two or more acts which are in
17 violation of subsection 1 and the acts occur in approximately
18 the same location or time period so that the acts can be
19 attributed to a single scheme, plan, or conspiracy, the acts
20 may be considered a single violation and the weight of the
21 controlled substances, counterfeit substances, ~~or~~ simulated
22 controlled substances, or imitation controlled substances
23 involved may be combined for purposes of charging the offender.

24 Sec. 10. Section 124.401, subsection 5, unnumbered
25 paragraph 1, Code 2017, is amended to read as follows:

26 It is unlawful for any person knowingly or intentionally
27 to possess a controlled substance unless such substance was
28 obtained directly from, or pursuant to, a valid prescription
29 or order of a practitioner while acting in the course of the
30 practitioner's professional practice, or except as otherwise
31 authorized by this chapter. Any person who violates this
32 subsection is guilty of a serious misdemeanor for a first
33 offense. A person who commits a violation of this subsection
34 and who has previously been convicted of violating this chapter
35 or chapter ~~124A~~, ~~124B~~, or 453B, or chapter 124A as it existed

1 prior to July 1, 2017, is guilty of an aggravated misdemeanor.
2 A person who commits a violation of **this subsection** and has
3 previously been convicted two or more times of violating this
4 chapter or **chapter ~~124A~~, ~~124B~~, or ~~453B~~**, or chapter 124A as it
5 existed prior to July 1, 2017, is guilty of a class "D" felony.

6 Sec. 11. Section 124.401A, Code 2017, is amended to read as
7 follows:

8 **124.401A Enhanced penalty for manufacture or distribution to**
9 **persons on certain real property.**

10 In addition to any other penalties provided in **this chapter**,
11 a person who is eighteen years of age or older who unlawfully
12 manufactures with intent to distribute, distributes, or
13 possesses with intent to distribute a substance or counterfeit
14 substance listed in schedule I, II, or III, or a simulated or
15 imitation controlled substance represented to be a controlled
16 substance classified in schedule I, II, or III, to another
17 person who is eighteen years of age or older in or on, or within
18 one thousand feet of the real property comprising a public or
19 private elementary or secondary school, public park, public
20 swimming pool, public recreation center, or on a marked school
21 bus, may be sentenced up to an additional term of confinement
22 of five years.

23 Sec. 12. Section 124.401B, Code 2017, is amended to read as
24 follows:

25 **124.401B Possession of controlled substances on certain real**
26 **property — additional penalty.**

27 In addition to any other penalties provided in **this chapter**
28 or another chapter, a person who unlawfully possesses a
29 substance listed in schedule I, II, or III, or a simulated or
30 imitation controlled substance represented to be a controlled
31 substance classified in schedule I, II, or III, in or on, or
32 within one thousand feet of the real property comprising a
33 public or private elementary or secondary school, public park,
34 public swimming pool, public recreation center, or on a marked
35 school bus, may be sentenced to one hundred hours of community

1 service work for a public agency or a nonprofit charitable
2 organization. The court shall provide the offender with a
3 written statement of the terms and monitoring provisions of the
4 community service.

5 Sec. 13. Section 124.406, subsection 2, Code 2017, is
6 amended to read as follows:

7 2. A person who is eighteen years of age or older who:

8 a. Unlawfully distributes or possesses with the intent to
9 distribute a counterfeit substance listed in schedule I or II,
10 or a simulated or imitation controlled substance represented
11 to be a substance classified in schedule I or II, to a person
12 under eighteen years of age commits a class "B" felony.

13 However, if the substance was distributed in or on, or within
14 one thousand feet of, the real property comprising a public or
15 private elementary or secondary school, public park, public
16 swimming pool, public recreation center, or on a marked school
17 bus, the person shall serve a minimum term of confinement of
18 ten years.

19 b. Unlawfully distributes or possesses with intent to
20 distribute a counterfeit substance listed in schedule III, or
21 a simulated or imitation controlled substance represented to
22 be any substance listed in schedule III, to a person under
23 eighteen years of age who is at least three years younger than
24 the violator commits a class "C" felony.

25 c. Unlawfully distributes a counterfeit substance listed
26 in schedule IV or V, or a simulated or imitation controlled
27 substance represented to be a substance listed in schedule IV
28 or V, to a person under eighteen years of age who is at least
29 three years younger than the violator commits an aggravated
30 misdemeanor.

31 Sec. 14. Section 124.415, Code 2017, is amended to read as
32 follows:

33 **124.415 Parental and school notification — persons under**
34 **eighteen years of age.**

35 A peace officer shall make a reasonable effort to identify a

1 person under the age of eighteen discovered to be in possession
 2 of a controlled substance, counterfeit substance, ~~or simulated~~
 3 controlled substance, or imitation controlled substance in
 4 violation of this chapter, and if the person is not referred
 5 to juvenile court, the law enforcement agency of which the
 6 peace officer is an employee shall make a reasonable attempt
 7 to notify the person's custodial parent or legal guardian
 8 of such possession, whether or not the person is arrested,
 9 unless the officer has reasonable grounds to believe that such
 10 notification is not in the best interests of the person or will
 11 endanger that person. If the person is taken into custody,
 12 the peace officer shall notify a juvenile court officer who
 13 shall make a reasonable effort to identify the elementary or
 14 secondary school the person attends, if any, and to notify the
 15 superintendent of the school district, the superintendent's
 16 designee, or the authorities in charge of the nonpublic school
 17 of the taking into custody. A reasonable attempt to notify
 18 the person includes but is not limited to a telephone call or
 19 notice by first-class mail.

20 Sec. 15. NEW SECTION. 124.417 Imitation controlled
 21 **substances — exceptions.**

22 It is not unlawful under this chapter for a person registered
 23 under section 124.302, to manufacture, deliver, or possess with
 24 the intent to manufacture or deliver, or to act with, one or
 25 more other persons to manufacture, deliver, or possess with
 26 the intent to manufacture or deliver an imitation controlled
 27 substance for use as a placebo by a registered practitioner in
 28 the course of professional practice or research.

29 Sec. 16. Section 124.502, subsection 1, paragraph a, Code
 30 2017, is amended to read as follows:

31 a. A district judge or district associate judge, within
 32 the court's jurisdiction, and upon proper oath or affirmation
 33 showing probable cause, may issue warrants for the purpose of
 34 conducting administrative inspections under this chapter or
 35 a related rule ~~or under chapter 124A~~. The warrant may also

1 permit seizures of property appropriate to the inspections.
2 For purposes of the issuance of administrative inspection
3 warrants, probable cause exists upon showing a valid public
4 interest in the effective enforcement of the statute or related
5 rules, sufficient to justify administrative inspection of the
6 area, premises, building, or conveyance in the circumstances
7 specified in the application for the warrant.

8 Sec. 17. Section 155A.6, subsection 3, Code 2017, is amended
9 to read as follows:

10 3. The board shall establish standards for
11 pharmacist-intern registration and may deny, suspend,
12 or revoke a pharmacist-intern registration for failure to meet
13 the standards or for any violation of the laws of this state,
14 another state, or the United States relating to prescription
15 drugs, controlled substances, or nonprescription drugs, or for
16 any violation of [this chapter](#) or [chapter 124](#), ~~[124A](#)~~, [124B](#), [126](#),
17 [147](#), or [205](#), or any rule of the board.

18 Sec. 18. Section 155A.6A, subsection 5, Code 2017, is
19 amended to read as follows:

20 5. The board may deny, suspend, or revoke the registration
21 of, or otherwise discipline, a registered pharmacy technician
22 for any violation of the laws of this state, another state, or
23 the United States relating to prescription drugs, controlled
24 substances, or nonprescription drugs, or for any violation of
25 this chapter or [chapter 124](#), ~~[124A](#)~~, [124B](#), [126](#), [147](#), [205](#), or
26 [272C](#), or any rule of the board.

27 Sec. 19. Section 155A.6B, subsection 5, Code 2017, is
28 amended to read as follows:

29 5. The board may deny, suspend, or revoke the registration
30 of a pharmacy support person or otherwise discipline the
31 pharmacy support person for any violation of the laws of
32 this state, another state, or the United States relating to
33 prescription drugs, controlled substances, or nonprescription
34 drugs, or for any violation of [this chapter](#) or [chapter 124](#),
35 ~~[124A](#)~~, [124B](#), [126](#), [147](#), [205](#), or [272C](#), or any rule of the board.

1 any detectable amount of those substances identified in section
2 124.204, subsection 9.

3 Sec. 26. Section 124.401, subsection 1, paragraph c, Code
4 2017, is amended by adding the following new subparagraph:

5 NEW SUBPARAGRAPH. (7A) Five kilograms or less of a
6 mixture or substance containing any detectable amount of those
7 substances identified in section 124.204, subsection 9.

8 Sec. 27. Section 124.401, subsection 1, paragraph d, Code
9 2017, is amended to read as follows:

10 *d.* Violation of **this subsection**, with respect to any other
11 controlled substances, counterfeit substances, ~~or~~ simulated
12 controlled substances ~~classified in section 124.204, subsection~~
13 ~~4, paragraph "ai", or section 124.204, subsection 6, paragraph~~
14 ~~"i", or, or imitation controlled substances~~ classified in
15 schedule IV or V is an aggravated misdemeanor. However,
16 violation of **this subsection** involving fifty kilograms or less
17 of marijuana or involving flunitrazepam is a class "D" felony.

18 DIVISION IV

19 ADDITIONAL CONTROLLED SUBSTANCES

20 Sec. 28. Section 124.204, subsection 9, Code 2017, is
21 amended by adding the following new paragraphs:

22 NEW PARAGRAPH. *p.* N-(1-phenethylpiperidin-4-yl)-N-
23 phenylfuran-2-carboxamide, its isomers, esters, ethers, salts
24 and salts of isomers, esters and ethers. Other names: Furanyl
25 fentanyl.

26 NEW PARAGRAPH. *q.* N-(1-phenethylpiperidin-4-yl)-N-
27 phenylbutyramide, its isomers, esters, ethers, salts and salts
28 of isomers, esters and ethers. Other names: Butyryl fentanyl.

29 NEW PARAGRAPH. *r.* N-[1-[2-hydroxy-2-(thiophen-2-
30 yl)ethyl]piperidin-4-yl]-N-phenylpropionamide, its isomers,
31 esters, ethers, salts and salts of isomers, esters and ethers.
32 Other names: beta-hydroxythiofentanyl.

33 NEW PARAGRAPH. *s.* 3,4-Dichloro-N-[2-
34 (dimethylamino)cyclohexyl]-N-methylbenzamide, its isomers,
35 esters, ethers, salts and salts of isomers, esters and ethers.

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1 Other names: U-47700.